

(b) Adequate protection of trust resources is not assured;

(c) The proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract;

(d) The amount of funds proposed under the contract is in excess of the applicable funding level for the contract, as determined under section 106(a) of the Act; or

(e) The program, function, service, or activity (or portion of it) that is the subject of the proposal is beyond the scope of programs, functions, services, or activities that are contractible under the Act because the proposal includes activities that cannot lawfully be carried out by the contractor.

§ 900.146 Is technical assistance available for waiver requests?

Yes. Technical assistance is available as provided in § 900.7 to prepare a waiver request or to overcome any stated objection which the Secretary might have to the request.

§ 900.147 What appeal rights are available?

If the Secretary denies a waiver request, the Indian tribe or tribal organization has the right to appeal the decision and request a hearing on the record under the procedures for hearings and appeals contained in subpart L of these regulations. Alternatively, the Indian tribe or tribal organization may sue in Federal district court to challenge the Secretary's action.

§ 900.148 How can an Indian tribe or tribal organization secure a determination that a law or regulation has been superseded by the Indian Self-Determination Act, as specified in section 107(b) of the Act?

Any Indian tribe or tribal organization may at any time submit a request to the Secretary for a determination that any law or regulation has been superseded by the Act and that the law has no applicability to any contract or proposed contract under the Act. The Secretary is required to provide an initial decision on such a request within 90 days after receipt. If such a request is denied, the Indian tribe or tribal organization may appeal under subpart L of these regulations. The Secretary

shall provide notice of each determination made under this subpart to all Indian tribes and tribal organizations.

Subpart L—Appeals

APPEALS OTHER THAN EMERGENCY REASSUMPTION AND SUSPENSION, WITHHOLDING OR DELAY IN PAYMENT

§ 900.150 What decisions can an Indian tribe or tribal organization appeal under this subpart?

(a) A decision to decline to award a self-determination contract, or a portion thereof, under section 102 of the Act;

(b) A decision to decline to award a construction contract, or a portion thereof, under sections 105(m) and 102 of the Act;

(c) A decision to decline a proposed amendment to a self-determination contract, or a portion thereof, under section 102 of the Act;

(d) A decision not to approve a proposal, in whole or in part, to redesign a program;

(e) A decision to rescind and re-assume a self-determination contract, in whole or in part, under section 109 of the Act except for emergency re-assumptions;

(f) A decision to refuse to waive a regulation under section 107(e) of the Act;

(g) A disagreement between an Indian tribe or tribal organization and the Federal government over proposed reporting requirements;

(h) A decision to refuse to allow an Indian tribe or tribal organization to convert a contract to mature status, under section 4(h) of the Act;

(i) All other appealable pre-award decisions by a Federal official as specified in these regulations, whether an official of the Department of the Interior or the Department of Health and Human Services; or

(j) A decision relating to a request for a determination that a law or regulation has been superseded by the Act.

§ 900.151 Are there any appeals this subpart does not cover?

This subpart does not cover:

(a) Disputes which arise after a self-determination contract has been

§ 900.152

awarded, or emergency reassumption of self-determination contracts or suspension of payments under self-determination contracts, which are covered under § 900.170 through § 900.176 of these regulations.

(b) Other post-award contract disputes, which are covered under subpart N.

(c) Denials under the Freedom of Information Act, 5 U.S.C. 552, which may be appealed under 43 CFR 2 for the Department of the Interior and 45 CFR 5 for the Department of Health and Human Services; and

(d) Decisions relating to the award of discretionary grants under section 103 of the Act, which may be appealed under 25 CFR 2 for the Department of the Interior, and under 45 CFR 5 for the Department of Health and Human Services.

§ 900.152 How does an Indian tribe or tribal organization know where and when to file its appeal from decisions made by agencies of DOI or DHHS?

Every decision in any of the ten areas listed above shall contain information which shall tell the Indian tribe or tribal organization where and when to file the Indian tribe or tribal organization's appeal. Each decision shall include the following statement:

Within 30 days of the receipt of this decision, you may request an informal conference under 25 CFR 900.154, or appeal this decision under 25 CFR 900.158 to the Interior Board of Indian Appeals (IBIA). Should you decide to appeal this decision, you may request a hearing on the record. An appeal to the IBIA under 25 CFR 900.158 shall be filed with the IBIA by certified mail or by hand delivery at the following address: Board of Indian Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, VA 22203. You shall serve copies of your Notice of Appeal on the Secretary and on the official whose decision is being appealed. You shall certify to the IBIA that you have served these copies.

§ 900.153 Does an Indian tribe or tribal organization have any options besides an appeal?

Yes. The Indian tribe or tribal organization may request an informal conference. An informal conference is a way to resolve issues as quickly as possible, without the need for a formal

25 CFR Ch. V (4–1–07 Edition)

hearing. The Indian tribe or tribal organization may also choose to sue in U.S. District Court under section 102(b)(3) and section 110(a) of the Act.

§ 900.154 How does an Indian tribe or tribal organization request an informal conference?

The Indian tribe or tribal organization shall file its request for an informal conference with the office of the person whose decision it is appealing, within 30 days of the day it receives the decision. The Indian tribe or tribal organization may either hand-deliver the request for an informal conference to that person's office, or mail it by certified mail, return receipt requested. If the Indian tribe or tribal organization mails the request, it will be considered filed on the date the Indian tribe or tribal organization mailed it by certified mail.

§ 900.155 How is an informal conference held?

(a) The informal conference shall be held within 30 days of the date the request was received, unless the Indian tribe or tribal organization and the authorized representative of the Secretary agree on another date.

(b) If possible, the informal conference will be held at the Indian tribe or tribal organization's office. If the meeting cannot be held at the Indian tribe or tribal organization's office and is held more than fifty miles from its office, the Secretary shall arrange to pay transportation costs and per diem for incidental expenses to allow for adequate representation of the Indian tribe or tribal organization.

(c) The informal conference shall be conducted by a designated representative of the Secretary.

(d) Only people who are the designated representatives of the Indian tribe or tribal organization, or authorized by the Secretary of Health and Human Services or by the appropriate agency of the Department of the Interior, are allowed to make presentations at the informal conference.

§ 900.156 What happens after the informal conference?

(a) Within 10 days of the informal conference, the person who conducted